

STATEMENT OF REASONS
Title 2, Chapter 1, California Code of Regulations
Adopt Sections 11, 12, 12.1, 155, 156, 157, 158, and 159
Amend Section 547.52

The State Personnel Board (Board) proposes to adopt sections 11, 12, 12.1, 155, 156, 157, 158, and 159, and amend section 547.52 of Title 2, Chapter 1, of the California Code of Regulations (CCR), which all relate to Limited Examination and Appointment Program (LEAP) referral lists and appointments.

SPECIFIC PURPOSE OF EACH SECTION

The specific purpose of each adoption, and the rationale for the determination that each adoption is reasonably necessary to carry out the purpose for which it is proposed, together with a description of the problem, administrative requirement, or other condition or circumstance that each adoption is intended to address, is as follows:

The proposed adoption of sections 11, 12, and 12.1 of Title 2, Chapter 1, of the CCR adds the definitions of “LEAP,” “hiring manager,” and “hiring manager’s report,” respectively.

LEAP provides an alternative to the traditional civil service examination and appointment process to facilitate the hiring of persons with disabilities in the state civil service. (Gov. Code, § 19240.) The Board establishes rules implementing and enforcing the merit principle in the state civil service system, including rules related to LEAP and non-LEAP civil service examinations and appointments. (Gov. Code, §§ 18660, 18701 & 19240.) In accordance with Board rules, the California Department of Human Resources (CalHR) administers LEAP and the traditional state civil service system. (Gov. Code, §§ 18502 & 19240.)

The instant regulatory package creates new rules related to generating LEAP-referral lists where an appointing power requests or generates any type of promotional or open employment list. The package references “LEAP,” “hiring manager,” and “hiring manager’s report.” Those terms, however, are not currently defined in the Board’s regulations. Therefore, definitions of these terms are required for clarity and consistency, and to avoid misunderstandings and incorrect interpretations.

The proposed adoption of sections 155, 156, and 157, of Title 2, Chapter 1, of the CCR adds rules related to generating a corresponding LEAP-referral list where the appointing power requests or generates any type of promotional or open employment list to fill a vacant position; creating a Hiring Manager’s Report where a corresponding

LEAP-referral list exists; and non-disclosure of a candidate's eligibility during the selection process.

The Legislature has declared that the policy of California is to encourage and enable persons with a disability to participate fully in the social and economic life of the state and to engage in remunerative employment. (Gov. Code, § 19230, subd. (a).) California's policy also involves the hiring of qualified persons with a disability in state service. (Gov. Code, § 19230, subd. (b).) Moreover, each state agency is charged with establishing an effective affirmative action program to ensure that persons with a disability, who are capable of remunerative employment, have access to positions in state service on an equal and competitive basis with the general population. (Gov. Code, § 19232.)

LEAP is a key piece in the state's affirmative action policy for persons with disabilities. LEAP is an alternate examination and appointment process designed to facilitate the recruitment and hiring of persons with disabilities into state civil service employment. Persons who qualify for LEAP are able to apply for any LEAP specified examination for which minimum qualifications are met. The law, however, does not require state agencies to consider candidates from LEAP-referral lists.

This regulatory package is designed to promote state agencies to consider qualified LEAP candidates for job vacancies while maintaining a competitive selection process. Section 155 requires that where the appointing power requests or generates any type of promotional or open employment list to fill a vacant position, the Department shall ensure that any existing LEAP-referral list corresponding to the classification of the position to be filled will also be provided to or generated for the appointing power.¹ Section 156 requires the creation of a Hiring Manager's Report that will list the names of all eligible candidates, including LEAP candidates. To ensure an unbiased and fair selection process, the following restrictions are placed on the Hiring Manager's Report: (1) the report must not identify from which list a candidate is eligible; (2) the name of candidates with dual eligibility, i.e., eligibility on a LEAP-referral list and a non-LEAP employment list, must be listed only once; and (3) since candidates on a LEAP-referral list are not ranked, the report must not identify the rank of any candidates. In addition, section 157 requires non-disclosure of a candidate's eligibility during the selection process, unless the LEAP candidate chooses to voluntarily disclose his or her LEAP eligibility.

These regulations are necessary to ensure that when appointing powers are making selection decisions, qualified LEAP candidates are included in the pool of candidates to be considered. The regulations are also designed to safeguard against any bias or prejudice that may exist toward LEAP candidates.

The proposed adoption of sections 158 and 159 of Title 2, Chapter 1, of the CCR adds rules allowing a selected candidate who has dual eligibility to choose from which

¹ It should be noted that section 155 also clarifies that nothing in the section shall be construed to prevent an appointing power from only requesting or generating a LEAP-referral list to fill a job vacancy.

list he or she will be appointed and requiring the appointing power to document from which list the candidate chose appointment.

Section 158 concerns candidates on the Hiring Manager's Report who have eligibility on a LEAP-referral list and a non-LEAP employment list. If the candidate is selected for hire, the rule allows the candidate to choose from which list he or she will be appointed. The rule also makes clear that all laws and regulations applicable to LEAP shall apply if a candidate is selected for appointment from a LEAP-referral list, and all rules and laws applicable to probationary periods and appraisals shall apply if a candidate is selected for appointment from a non-LEAP employment list. Section 159 requires the appointing power to document from which list the candidate chose appointment. The documentation must be retained for a period of five years after the effective date of the appointment.

Allowing a candidate selected for hire who has dual eligibility to choose from which list he or she will be appointed will make for a simple, efficient, and clear hiring process and avoid any confusion as to which civil service rules and laws apply to the appointment. The availability of documents under section 159 will assist in the oversight and quality of the Board's review of an appointing power's hiring practices related to LEAP. The Board may conduct compliance reviews of the personnel practices of any state appointing power to ensure compliance with civil service laws and regulations. (Gov. Code, § 18661.) In addition, retention of these records will also provide critical data as to the effectiveness and use of LEAP by persons with disabilities.

The proposed amendment of section 547.52 of Title 2, Chapter 1, of the CCR requires that LEAP-referral lists comply with Subchapter 1.3, sections 155 and 156.

Section 547.52 concerns LEAP readiness evaluations and provides that applicants who are ready for immediate employment in a LEAP classification shall be placed on the referral list specified in Government Code section 19242.2. The proposed amendment to this regulation clarifies that LEAP-referral lists must also comply with sections 155 and 156. There is also a non-substantive change for style and consistency.

CONSIDERATION OF ALTERNATIVES

The Board has initially determined that no reasonable alternatives it has considered or that have been otherwise identified and brought to the attention of the Board would be more effective in carrying out the purposes for which the instant action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.